

24.09.2021

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**F.M.A. 546 of 2017
I.A. CAN 1 of 2021
(Via Video Conference)**

**Srihari Ghosh
Vs.
The Oriental Insurance Co. Ltd. & ors.**

**Mr. Ali Imam Shah
...For the Appellant/claimant**

**Mr. Sanjay Paul
... For the respondent No.1/Insurance Co.**

The instant appeal is directed against the judgment and award dated June 18, 2014 passed by the learned Judge, Motor Accident Claims Tribunal, 5th Court, Burdwan, Purba Bardhaman in MAC Case No. 41 of 2012/300 of 2012 in a claim under Section 166 of the Motor Vehicles Act, 1988 for injury of Sri Hari Ghosh in road accident occurred on 27.11.2011.

The claim was filed under Section 166 of the Motor Vehicles Act. Learned Advocate for the appellant/claimant submits that the learned Tribunal committed error in law while not granting medical expenses which were proved by evidence of P.W.3, Pratap Swain who was working at Woodland Hospital, Kolkata and he submitted money receipts and medical bills marked as exhibit 6 collectively and marked as exhibit 7 collectively for a sum of Rs.4,46,906/-.

Learned Advocate for the appellant submits that in case of injury, medical expenditure should be granted

under the head of 'Medical Expenditure' but learned Tribunal committed an error in law in not considering the same under the head of medical expenditure.

Considering the judgement of **Syed Sadiq Etc. Vs. United India Insurance Co. Ltd.**, reported in **2014(1) T.A.C. 369(SC)** and the judgement of **National Insurance Company Ltd. Vs. Subhasis Manna & anr.**, reported in **2019(4) T.A.C. 95(Cal)**.

In reply, Mr. Sajay Paul, learned Advocate appearing on behalf of the Insurance Company submits that the award passed by the learned Tribunal is absolutely just and proper and there is no scope of interference and/or modification of award.

Mr. Paul further submits that the learned Tribunal rightly refused to grant any compensation towards medical expenses since the victim did not suffer any permanent or temporary disability. It is also argued that on the day of occurrence the victim was initially admitted at Burdwan Medical College & Hospital wherefrom the victim had been referred to S.S.K.M. Hospital or National Medical College & Hospital for better treatment but the victim or his family members chose to admit the victim at Woodlands Hospital for luxurious treatment and spent Rs.4,46,906/-. Accordingly, the insurance company should not be held liable for such luxurious treatment.

After considering the submissions made by the learned Counsel for the parties and the evidence of the representative in Woodlands Hospital, I did not find any gravity in the submissions of Mr. Paul, learned Counsel for the insurance company as it is the right and choice of the victim to get best treatment in any Nursing Home or Hospital, either Government or private.

Accordingly, the impugned award is modified and recalculated in the manner referred hereinafter :

<u>Particulars</u>	<u>Amount</u>
Pain and suffering	Rs.50,000/-
Loss of earning during period of treatment	Rs.2,000/-
Medical expenditure	<u>Rs.4,46,906/-</u>
Total compensation	Rs.4,98,906/-
Less : Deduction of award money	<u>Rs.52,000/-</u>
Enhanced award	Rs.4,46,906/-

Mr. Ali Imam Shah, learned Counsel appearing on behalf of the appellant/claimant admits that his client has already received the awarded sum of Rs.52,000/- along with interest. Accordingly, the balance enhanced sum of Rs.4,46,906/- would become payable to the appellant/claimant by the insurance company together with interest @ 6% p.a. on and from the date of filing of the claim petition till actual payment within a period of 45 days from the date of receipt of the bank account particulars of the claimant. Learned Advocate for the

appellant/claimant will forward the bank account details of the claimant within a fortnight from date to the learned Advocate for the Insurance Company.

It is made clear that the payment shall be made by NEFT/RTGS.

With the aforesaid directions, the instant appeal is disposed of. There shall be no order as to costs.

In view of the disposal of this appeal, connected application, if any, is also disposed of.

L.C.R., if any, be returned back to the court below forthwith.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(Shekhar B. Saraf, J.)